

## **SECTION 14 DISTRICT RECOMMENDATION FOR AWARD/ REQUESTS TO REJECT BIDS**

### **14.1 PURPOSE**

This Section provides guidance to the staff involved in the preparation of the District Recommendation for Contract Award or Requests to Reject Bids.

### **14.2 RESPONSIBILITIES**

#### **14.2.1 PROJECT MANAGER**

Reviews the award recommendation/ request to reject bids prior to submittal to DES-OE.

#### **14.2.2 PE, DESIGN ENGINEER, AND DISTRICT OVERSIGHT ENGINEER**

Provides information or clarification needed by DES-OE and may sign contract award recommendation/ request to reject bids.

#### **14.2.3 DOE**

- Acts as liaison for DES-OE and the district to resolve issues in a timely manner.
- Signs or concurs with the award recommendation or request to reject bids

### **14.3 COMMUNICATIONS WITH BIDDERS PRIOR TO BID OPENING**

Pre-bid opening communications with bidders should be limited to contacting potential bidders to make them aware of the project location, work type and bid opening date. It's also OK to ask them if they plan to bid and if not, why not.

Avoid discussing contract specifics with the contractors that could be construed as bidder's inquiries, potential addenda, CCO's etc. Refer these types of questions through the bidder inquiry process.

### **14.4 DISTRICT RECOMMENDATION**

DES-OE is responsible for preparing and processing the documents needed to award a contract or reject a bid. Within one business day after bid verification, the DES-OE Awards Unit will provide the district with a printout of the bid opening results. This bid summary shows each bid item, the total bid, and the listed subcontractors for each bidder on a project.

Districts/regions are responsible for recommending award of the contract or requesting rejection of bids. The recommendation is required for all projects. Unless extended by the DES-OE Awards Unit, the recommendation or request to

reject bids is due within five business days after bid opening. The recommendation for informal bids contracts is due one business day after bid opening. Recommendations are sent by email to "DES-OE Award Recommendation". The recommendation is not to be revealed to contractors or external agencies. See the Appendix for example award recommendations and requests to reject bids.

The district/region shall use the following procedures to prepare all contract award recommendations. See Table 14-1, "Special Bid Situations," for more information.

The district should use the bid summary to analyze the bids to determine whether to recommend award to the apparent low bidder. The district may also recommend rejecting an individual bid or request rejecting all bids, in the event that none of the bids are acceptable. District personnel are encouraged to confer with DES-OE and appropriate Headquarters divisions before deciding whether a bid is acceptable.

The district is encouraged to contact the low bidder. Although district personnel are cautioned to avoid discussing contract issues with bidders, it is permissible to inquire if the low bidder is satisfied with its bid and to discuss factors which may have influenced the bid.

The recommendation must contain the following information:

- General project and bid information, e.g., "Bids for this project were opened on September 3, 2003. Nine bids were received; bids ranged from \$1,597,289 to \$2,170,264. The low bid is 15.53 percent under the Engineer's Estimate (EE) of \$1,891,000."
- Discussion of the differences between the bid items and the Engineer's Estimate. Be specific, e.g., "The bid prices have been reviewed and are in reasonable conformance with the Engineer's Estimate" or "Two items, Traffic Control System and Rock Excavation, account for 98% of the difference between the low bid and the Engineer's Estimate. The EE was based on blasting. The low bidder plans to excavate by ripping, resulting in substantial savings."
- Statement that the low bid has been reviewed for possible mathematical or material unbalancing per 23 CFR 635.102. Following are the U.S. Comptroller General's definitions of mathematically and materially unbalanced bids.

"A bid is mathematically unbalanced if the bid is structured on the basis of nominal prices for some work and inflated prices for other work; that is, each element of the bid must carry its proportionate share of the total cost of the work plus profits."

"A bid is materially unbalanced if there is reasonable doubt that award to the bidder submitting the mathematically unbalanced bid will result in the lowest ultimate cost to the Government."

- Statement describing water availability for construction per Deputy Directive 13, "Water Conservation."

- If applicable, a statement that local agency funds are (or are not) on deposit in accordance with cooperative agreement(s). If the funds are not on deposit, follow up with a confirmation once the funds are on deposit.
- If applicable, a statement that escrow by the three low bidders was successfully completed.
- If applicable, a statement that the days bid to complete an A+B contract are reasonable.
- If applicable, the Right of Way Certification has been updated.
- Any necessary clearances have been received or permits have been issued.
- Recommendation to award to the lowest responsive and responsible bidder of the bids received or to reject bids including justification for the recommendation.
- Signature or concurrence of the District/Region Office Engineer.

In the event that there is insufficient funding to award the contract, DES-OE will send the Project Manager a "Notice of Funding Shortfall." The district should contact DES-OE Awards Unit to discuss the alternatives identified in the notice. After discussion with the DES-OE Awards Unit, include the District's resolution to the funding shortfall in the award recommendation. Requests to reduce supplemental work or state furnished material must be approved by the Office Engineer. Requests to change contingencies must be approved by the Chief Engineer.

When bids are lower than the Engineer's Estimate, it is inappropriate to add supplemental work items or increase the amount of the existing items or the contingency amount.

#### **14.5 REQUESTS TO REJECT BIDS**

Requests to reject bids on a contract must be sent to the Office Engineer and approved by the Chief Engineer. The request must include:

- Description of significant differences between the Engineer's Estimate and the bids received.
- Description of the competition, whether or not it was adequate. Include reasons given by plan holders that chose not to bid.
- Description of any problems with the plans, specifications or estimate
- A review of bidder's inquiries and responses
- Alternatives to bid rejection including supplemental fund vote by the CTC or reduction in supplemental work, state furnished materials or contingencies.
- Description of material changes to the plans, specifications or estimate for the readvertised contract .

Disposition of the contract files at DES-OE, e.g. returned to the district, retained in DES-OE or deleted.

### Special Bid Situations

| Special Bid Situation   | Response to Special Bid Situation   |
|---|---|
| The district is unable to contact the low bidder or considers such contact as unnecessary or inadvisable.   | The district should explain the pertinent facts in the recommendation.  |
| Examination of the bid reveals obvious unbalancing (e.g., a bid of \$1.00 for plant establishment work, or a unit price of \$0.01 for imported borrow).   | The district should: <ul style="list-style-type: none"> <li>• Determine if the unbalancing is merely mathematical or is unbalanced to the detriment of the State (material unbalancing).</li> <li>• Contact DES-OE if the unbalancing is material.</li> </ul>                                       |
| Only one bid is received.   | The district is to contact other proposal book holders to inquire as to the reasons for not bidding. This information may be useful in supporting a recommendation to reject the bid or award to the low bidder. The pertinent facts of this investigation should be included in the recommendation |
| The project has A+B provisions. (In A+B projects, the contractor bids on the items ("A" total) as well as the number of days to complete the project ("B" total). Bidders are compared and ranked on the A+B total. | The district should analyze the low bidder's bid for days to complete the work, "B," to determine if the work can reasonably be accomplished within that timeframe.   |
| The low bidder has a recent history of contract terminations for cause or documented performance problems on the Department's projects.   | The district is to include specific contract history relating to the low bidder's performance problems in the recommendation and request a determination of the bidder's responsibility.  |

| Special Bid Situation  | Response to Special Bid Situation   |
|--|---|
| The low bid is 25 percent or more below the Engineer's Estimate. | <p>The district should:</p> <ul style="list-style-type: none"> <li>• Contact the low bidder to determine if the bidder is satisfied with the bid. If the bidder indicates a mistake was made in the bid, refer the bidder to the Contract Awards Unit.</li> <li>• Review the Engineer's Estimate for errors in the item prices.</li> <li>• Mention the factors resulting in the low bid in the recommendation.</li> </ul>   |
| The low bid is 10 percent or more above the Engineer's Estimate. | <p>The district should:</p> <ul style="list-style-type: none"> <li>• Discuss the bid with the low bidder.</li> <li>• Determine if the competition was adequate. If bidding was limited, the district should contact the proposal book holders who elected not to bid to determine why they did not bid.</li> <li>• Determine if the timing of the bidding influenced the number of bidders or the bid amounts.</li> <li>• Determine if the Engineer's Estimate was realistic (discuss the structure portions of the work with DES-SD).</li> <li>• Determine if the project should be rescope, and determine the consequences of any delay.</li> <li>• Mention the factors resulting in the high bid amounts in the recommendation.</li> </ul> |
| No bids received.  | <p>The district must contact proposal book holders to inquire as to the reasons for not bidding, and the DES-OE, Office of PS&amp;E, to discuss alternatives, e.g., scheduling a new bid opening date or rescope the project.</p>   |